Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

court it is said, "The only method which this court knows for preventing the spread of such abuses is that of compelling the retrial of causes in which they occur." If this pronouncement of the court is correct, a murderer caught redhanded, against whom the evidence is overwhelming, could get a new trial if the prosecuting officer persisted in asking improper questions. Granting a new trial to a defendant whom the jury, the trial judge and the appellate court itself all believe has been proved guilty, simply as a punishment to the prosecuting officer for violating the rules of evidence in trial practice, is precisely the exquisite absurdity the constitutional provision was designed to prevent. There are appropriate means to stop the spread of such abuses by prosecuting officers other than by the granting of a new trial. The trial court has the power to fine and imprison an attorney who persists in the repetition of objectionable questions. The occasional exercise of this power would do more to keep prosecuting attorneys within bounds than any other device. It is contrary to the dictates of common sense, and the express mandates of the constitution for the appellate courts to attempt to discipline prosecuting officers by the vicarious punishment of freeing a criminal unless the appellate court believes that the errors have resulted in a miscarriage of justice.

A. M. K.

EMINENT DOMAIN: RIGHT OF CONTINGENT REMAINDERMAN TO COMPENSATION.—A remainderman whose interest is vested has the unquestioned right to compensation for damages done to his interest in the freehold by taking of the land in eminent domain proceedings.[1] Whether or not one whose interest is merely a contingent one will be afforded similar protection is a question which has seldom been passed on by the courts. Recently, by way of dictum, the Supreme Court of California in the case of *Gordon v. Cadwalder* intimated that the holder of such an interest would be entitled to compensation.[2] The few cases in which this point has been directly presented take the view that since this kind of an interest in effect amounts to a mere expectancy, it is consequently incapable of valuation and no method of protection may be afforded its holder.[3]

To dismiss in such summary fashion the rights of the contingent remainderman seems hardly consistent with the modern status of such an interest in the law. It is regarded as a valuable

---

[1] Cal. Civ. Code, § 826. Alexander v. U. S., 39 Court of Claims, 383; Bridges v. Southern Ry. Co. (1910), 86 S. C. 267, 68 S. E. 551; In re Gilroy (1908), 60 N. Y. Misc. 125, 112 N. Y. Sup. 111.

[2] Gordon v. Cadwalader (March 8, 1916), 51 Cal. Dec. 328, 331, 156 Pac. 471.

[3] Fifer v. Allen (1907), 228 Ill. 507, 81 N. E. 1105 (An executory devise); Chesapeake Ry. Co. v. Bradford (1873), 6 W. Va. 220, 230.

one,[4] and while formerly subject to destruction upon the determination of the particular estate upon which it was dependent, now by statute a contingent remainder is almost universally regarded as indestructible,[4] subject only to be defeated upon the failure of the particular contingency. The courts also, although refusing damages at law, will grant a bill in equity to restrain threatened waste,[5] thus placing it within the power of the remainderman to protect his contingent interest. In the case of eminent domain proceedings, since he is powerless to prevent the taking of the land, as a matter of justice his possible right in the compensation awarded for such taking should in some way be secured to him.

The courts have done this with respect to a wife's inchoate right to dower,[6] an interest very much like that of a contingent remainderman, both being contingent, indestructible, and the vesting of either giving a complete legal estate. The wife has thus been secured her interest in the portion of the award which represents her inchoate right to dower. Such security could be given the contingent remainderman,[7] and as in the case of a vested remainder, his interest might be secured in three different ways. The tenant of the particular estate could be given the use of the entire award, upon securing the remainderman,[8] or the damages could be apportioned, the remainderman's share being invested until the estate vested or failed to vest.[9] Still another means would be that of investing the entire award, and allowing the tenant of the particular estate during its existence the returns on the investment.

Whatever the method be, the justice of the situation should override the technical objection that the estate is merely contingent, thus depriving the holder of compensation to which later he may fairly be entitled.

R. C. F.

EMPLOYERS' LIABILITY: LIABILITY OF PROPERTY OWNER AND OF INDEPENDENT CONTRACTOR.—Of the many recent decisions of the Supreme Court of the State of California under the Workmen's Compensation Insurance and Safety Act, the one of most concern to workingmen, property owners and contractors, is *Carstens v. Pillsbury*.[1] The court held that the Industrial Accident Commission was without authority to make an award against

---

[4] Cal. Civ. Code, § 741.

[5] Pakovich v. So. Pac. Ry. Co. (1906), 150 Cal. 39, 87 Pac. 1097.

[6] Wheeler v. Kirtland (1875), 27 N. J. Eq. 534.

[7] See Cureton v. South Bound Ry. Co. (1901), 59 S. C. 371, 37 S. E. 914. In this case the remainderman had in fact only a contingent interest; the court allowed compensation without commenting on this point.

[8] In re Gilroy, supra, n. 1.

[9] Miller v. City of Asheville (1893), 112 N. C. 769, 16 S. E. 765.

[1] (May 22, 1916), 51 Cal. Dec. 574.